

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD EUGENE HINKLE,

Defendant-Appellant.

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UNPUBLISHED

November 27, 2007

No. 271166

Oakland Circuit Court

LC No. 2005-205313-FH

Before: Servitto, P.J., and Sawyer and Murray, JJ.

MURRAY, J., (*concurring*).

I agree with all that is said within the majority opinion. However, I write separately to indicate my disapproval of the prosecutor's repeated questioning of defendant regarding the veracity of the prosecution's witnesses.

As the majority makes clear, a prosecutor cannot ask a defense witness to comment on the credibility of another witness. Rather, it is for the trier of fact to assess the credibility of the witnesses. *People v Buckey*, 424 Mich 1, 17; 378 NW2d 432 (1985); *People v Ackerman*, 257 Mich App 434, 449; 669 NW2d 818 (2003). The record in this case unquestionably shows that the prosecutor repeatedly violated this rule. The specifics of this questioning are detailed below.

On cross-examination, the prosecutor asked defendant about Officer Miracle's testimony that he had heard defendant say he broke into Kamphuis's house. Defendant said the statement was not true. The prosecution asked defendant if he could think of any reason Officer Miracle would say that in court if it were not true. Defendant replied that he could not. Then, the prosecution asked defendant about the testimony of an employee in the human resources department of the Oakland Press, defendant's former employer, that their records did not reflect defendant having changed his address to 51 Spokane. Defendant said he had talked to his boss about changing his address. The prosecutor continued:

Q. Okay. So far Officer Miracle dropped the ball, right?

A. I beg your pardon?

Q. Officer Miracle dropped the ball so far, right?

A. Yeah.

Q. Yeah?

A. What do you mean?

Q. Well, you're basically saying he lied.

A. Oh, okay.

Q. Right?

A. I didn't know what you meant by the phrase.

Q. I'm—I apologize. He—Office Miracle lied, right?

A. Yeah.

Q. Okay. Oakland Press dropped the ball, right?

A. (inaudible).

Later, after defendant denied entering Kamphuis's apartment through the window, the prosecutor asked him if he had heard Flores's testimony:

Q. You heard [Flores] testify that he saw you pushing the air conditioning and come through the window, right?

A. Yes.

Q. So [Flores is] lying?

A. Yes.

Q. Okay. So, so far Officer Miracle's lying, [Flores is] lying, and the Oakland Press had dropped the ball, right?

A. Yes.

Q. That's what you're saying so far, right?

A. Yes. It might be a misunderstanding if anything.

Then the prosecutor asked defendant about Greg Cunningham's testimony. Defendant said he had spoken to James Cunningham about the joint lease, had never spoke to Greg Cunningham, and Greg Cunningham lied. The prosecutor continued:

Q. Okay. So [Greg] Cunningham lied, Officer Miracle lied, [Flores] lied, and the Oakland Press dropped the ball, right?

A. I'm listening, yeah?

Finally, after the prosecutor asked defendant about Kamphuis's bruises, and he denied hitting her, the prosecutor asked defendant if Kamphuis "fabricated this." Defendant replied, "It's obvious."

The record is therefore as clear as the water flowing down a Montana stream: the prosecution utilized the impermissible tactic of trying to discredit defendant by getting him to call everyone testifying against him, including a police officer, a liar. *Buckey, supra*. This questioning was not isolated, and was either intentional or done without excusable neglect. It should not, and cannot, happen again. Only because the evidence against defendant was otherwise compelling has the error not, in my view, caused a reversal.

/s/ Christopher M. Murray